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Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 264.

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FILED
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JAMES H. McKENNEY,
Clerk.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. SNUGGS, Treasurer of Stanly County,

Petitioners,

vs.

W. N. COLER & COMPANY,

Respondents.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR RESPONDENTS.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel.

C. G. Roebuck, Walker and Centre Streets, N. Y.

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(*A*) That under the decisions of the Supreme Court of North Carolina, as they existed when these bonds were issued, the issuance of these bonds, with the recital that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County," constitutes a conclusive adjudication by the appointed tribunal that all the conditions precedent prescribed by these Sections of the Code were fulfilled, *whatever these Code sections may mean*, and even if

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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 264.

The Board of Commissioners of Stanly County and I. W. Snuggs, Treasurer of Stanly County,
Petitioners,

vs.

W. N. Coler & Company,
Respondents.

Brief for Respondents.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel.

STATEMENT OF THE CASE.

This suit was originally brought in the United States Circuit Court for the Western District of North Carolina. It was heard upon the bill, answers, repli-

cations and evidence, and resulted in a decree in favor of Coler & Company, complainants, and holders of negotiable bonds of Stanly County. The decree of the Circuit Court, rendered by Judge SIMONTON, is found on page 62 of the record.

The opinion of Judge SIMONTON is printed at large in the Record, page 42, *et seq.*

The defendants—to wit, the County Commissioners of Stanly County and Snuggs, its Treasurer—took an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, where it was heard, and an opinion was rendered by GOFF, J. (Record, page 65), reversing the decision of the Circuit Court and directing that Court to dismiss the bill (Record, page 74).

Thereupon a petition for rehearing was filed in the United States Circuit Court of Appeals (Record, page 75); and, after argument, that Court rendered its opinion, granting the petition for rehearing and reversing its former opinion and decision and holding the bonds valid (Record, page 81), and a decree was entered accordingly affirming the decree of the Circuit Court (Record, page 102).

The opinions of MORRIS and BOYD, JJ., and the dissent of GOFF, J., appear in the Record, pages 81, 89, 102.

The Commissioners of Stanly County filed a petition for *certiorari*, and the same was granted by this Court, and the case now stands for argument here on this writ of *certiorari*.

We print in the APPENDIX to this brief the provisions of the Constitution of the State of North Carolina, so far as they are here material, and the original Act of April 10, 1869, which afterwards became Sections 1996–2000 of the Code of 1883.

ARGUMENT.

I.

Recitals in These Negotiable Bonds.

The bonds in suit are negotiable (see Record, p. 7 for copy of bond). They are dated July 1, 1890, and were issued in that year. They recite as follows (Record, p. 7):

"*This bond* is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, making a total of one hundred thousand dollars, *issued by authority* of an act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled, 'An Act to amend the Charter of the Yadkin Railroad Company,' *and of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*, and *authorized by a majority vote of the qualified voters* of Stanly County, at an election regularly held for that purpose on the 15th day of August, 1889, duly ordered by the Board of Commissioners of Stanly County."

It will be observed that they recite not only the act of March 3, 1887, *but specifically Sections 1996 to 1999, inclusive, of the Code*, and that the bonds are authorized by a *majority vote* of the qualified voters of Stanly County, voting at an election held the 15th of August, 1889. These bonds also recite (Rec., p. 7) that they were issued to pay for a subscription to the stock of the Yadkin Railroad Company, mentioned in the bonds, to aid in the construction of the railroad of that company.

The complainants are *bona fide* holders for value of 48 of the said Stanly County bonds (Rec., pp. 2, 3, 42, 43, 62).

Sections 1996-2000 of the Code of North Carolina of 1883 are printed in the Appendix to this Brief.

It is admitted by all parties and all Courts that these sections of the Code were enacted in the manner prescribed in the Constitution, are constitutionally valid and authorize the issue of bonds on the conditions therein prescribed.

Our propositions with regard to these Stanly County Bonds are twofold:

*(A) That under the decisions of the Supreme Court of North Carolina, as they existed when these bonds were issued, the issuance of these bonds, with the recital that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County," constitutes a conclusive adjudication by the appointed tribunal that all the conditions precedent prescribed by these sections of the Code were fulfilled,* WHATEVER THESE CODE SECTIONS MAY MEAN, *and even if they mean all that the learned Counsel for the county now contends that they mean. This was the law as it had been laid down in the decisions of the Supreme Court of North Carolina at the time of the issuance of these bonds. Under numerous decisions of the Federal Courts the purchasers of these bonds were entitled to rely upon these decisions of the Supreme Court of North Carolina, which had been rendered and which constituted the law of the State at the time these bonds were issued.*

We proceed to consider some of the decisions of the North Carolina Supreme Court, in which this doctrine is stated.

Effect of recitals in bonds, stated by the Supreme Court of North Carolina, in Belo vs. Commissioners of Forsyth County, 76 N. C., 489 (1877), before the bonds now in question were issued.

No Court in this country has stated in stronger language than the Supreme Court of North Carolina the doctrine of the negotiability of municipal bonds and of estoppel by recitals in such bonds. We have reprinted at length the case of *Belo vs. Commissioners of Forsyth County*, in a separate pamphlet, for the convenience of this Court. The Supreme Court of North Carolina in that case said:

"Municipal bonds are negotiable instruments, and the legal rights of the holders of such paper do not so much rest upon abstract propositions, though true, as upon a system of practical rules found by experience to be essential to healthy commercial life. For the public protection and the convenience of trade, every intendment is made in favor of the validity of negotiable instruments. Where bonds have been issued and sold in the market, and have come into the hands of a *bona fide* holder before maturity, as a general rule such bonds are *prima facie* valid, and the *onus* is upon the party impeaching them to show the contrary. This rule, however, which subsists between individuals, is much modified in respect to corporate bonds. Such bonds can be issued only in pursuance of a special grant of power, and the party claiming the benefit of such bonds must show a *power* in the corporate body to issue them. But if he is a purchaser for value without notice and before maturity, he need do no more. If a municipal corporation has the power to issue bonds only on a compliance with conditions precedent, as, for instance, as here, in pursuance of a popular vote and the bonds are issued, the presumption is that the conditions have been observed and they are *prima facie* valid, though the defendant may show the contrary unless he is *estopped* by his own acts from doing so. The principle, however, of equitable estoppel is a most important element in the transaction. For whether conditions precedent have been complied with is a

matter of fact to be determined by some tribunal invested with the power and authority to decide it, and the decision when made should be final. It is not disputed that the *power* to make the subscription of stock and issue the bonds was conferred upon the County of Forsyth by the Ordinance of the Convention. It is equally clear that the tribunal which was authorized to issue the bonds only on compliance with conditions precedent was the sole tribunal to determine the fact whether the conditions had been fulfilled. In our case the Justices of the County, a majority concurring, was the Court or tribunal designated to carry the law into effect, and was the tribunal to decide whether the conditions had been complied with, and their decision is final in a suit by a *bona fide* holder of the bonds against the municipality. This determination of a question of fact by the Justices is manifested in two ways: first, by the records of their Court, and, second, by the recitals in the bonds issued by them. The Justices were authorized by the Act to take the sense of the people, declare the result and issue the bonds. Their declaration spread upon the Minutes of the Court and made a record is conclusive against the County in favor of all *bona fide* bondholders, without notice. If they purchased, before maturity, they need look no further (*Marcy vs. Township of Oswego*, 92 U. S. Rep., 637; *Dunning vs. Houston*, 18 Am. Rep., 253, and note). If there was fraud in making the record, or irregularities in the election which would vitiate the bonds upon exceptions taken in apt time, any taxpayer of the County could intervene and enjoin their issue. But this could only have been done before the bonds were issued, negotiated and passed into circulation as commercial securities, with the insignia of validity impressed upon their face (*Chester & Lenoir R. R. Co. vs. Caldwell Co.*, 72 N. C., 486). If intentionally or by neglect the taxpayers fail to protest, interfere or assert their legal rights; if they suffer the election to be held, a false result declared, the bonds to be issued and sold, and the proceeds received by their agents; if for the period of four years they annually submit to a special tax, which is applied in payment of the accruing interest on the bonds; if they still retain the Railroad stock without an offer to surrender it, and continue to have it represented in the meetings of the Company, they cannot now disaffirm the acts of their public agents who issued and negoti-

ated the sale of the bonds. They had the opportunity to intervene and protect themselves before the rights of third persons accrued. Their acquiescence is a ratification by the principal of the acts of his agent, and, according to all the leading authorities upon this question, the doctrine of equitable estoppel is a complete bar, and is strictly applied to the enforcement of these municipal obligations (2 Daniel on Neg. Instr., Sec. 479; *State vs. Vanhorne*, 7 Ohio St., 331; *Barrett vs. County Court*, 44 Mo., 201).

"While the decisions are very uniform that the record of the Justices Court affirming the fact of compliance with the conditions precedent to the subscription of stock is conclusive and estops the County from denying the validity of the bonds in the hands of a *bona fide* holder before maturity, they are equally uniform in giving the same effect to the *recitals* in the bonds themselves that they had been issued in pursuance of the law which authorized their issue. The recital is a determination of the question, and the holder has the right to rely on it (*Town of Coloma vs. Eaves*, 92 U. S. Rep., 484; *Lynch vs. Winnebago*, 16 Wall., 13; *Knox County vs. Aspinwall*, 21 How., 539). In delivering the opinion of the Court in *Coloma vs. Eaves*, Mr. Justice STRONG says: 'In the leading case of *Knox County vs. Aspinwall*, the decision was rested upon two grounds. One of them was that the mere issue of the bonds containing a recital that they were issued in pursuance of the Legislative Act was a sufficient basis for the assumption by the purchaser that the conditions on which the County was authorized to issue them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to the *Royal British Bank vs. Turquand*, 6 Ellis and Blackburn, 327, a case in the Exchequer Chamber, which fully sustains it and the decision in which was concurred in by all the Judges. This position has been more than once reaffirmed in this Court. It was in *Moran vs. Miami County*, 2 Black, 732; in *Mercer County vs. Hacket*, 1 Wall., 83; in *Supervisors vs. Schenck*, 5 Wall., 784, and in *Meyer vs. Muscatine*, 1 Wall., 384. It has never been overruled, and whatever doubts may have been suggested respecting its correctness to the full extent to which it has been sometimes announced, there should be no doubt of the entire correctness of the other rule asserted in *Knox vs. Aspinwall*. That

has been so firmly seated in reason and authority that it cannot be shaken.' To the same effect is the recent case of *Humbolt Township vs. Long*, 92 U. S. Rep., 642. See, also, a valuable summary of the doctrine as established by the decisions of the Supreme Court of the United States by Judge DILLON, 'Law of Municipal Bonds,' Sec. 11, the result of which is that the recitals in the bonds to that effect are conclusive of compliance with the conditions precedent, and constitute an estoppel *in pais* upon the municipalities."

It stands demonstrated, therefore, from said case of *Belo vs. Commissioners of Forsyth County*, 76 N. C., 489, *supra*, decided in 1877, which continued to be the law down to the time when these Stanly County bonds were issued, that when these bonds were issued reciting that they are "*issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County*" that this recital in the bonds was, in the language of the Supreme Court of North Carolina in the *Belo case* above quoted "conclusive against the county in favor of all *bona fide* bondholders without notice."

We need not cite or quote at length the decisions of this, the Supreme Court of the United States, to show that the Federal courts will follow the decisions of the State court which had been rendered at the time the bonds were issued. It is enough to quote from the language of Mr. Justice HARLAN, in the case of *Wilkes County vs. Coler*, 180 U. S., 506, where the learned Justice says in answer number 2, page 533:

"2. That the rights of the parties in this case are determinable by the law of the State as it was declared by the State court to be at the time the bonds here involved were made in the name of the county and put upon the market."

So this Court, in *Folsom vs. Ninety-Six*, 159 U. S., 616, quoting from *Burgess vs. Seligman*, 107 U. S., 20, said (p. 625):

"So when contracts and transactions have been entered into, and rights have accrued thereon *under a particular state of the decisions*, or when there has been no decision of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued."

See also the cases cited by SIMONTON, J. (Record, p. 45), and the well-known case of *Township of Pine Grove vs. Talcott*, 19 Wall., 667, and a score of other cases in this Court.

*(B) Our second proposition is that inasmuch as the question here involved is a question of commercial paper and of the validity of contracts entered into before any decisions were rendered by the Supreme Court of North Carolina which would in any way impeach the validity of these bonds, the Federal courts (if there were no decisions prior to the issuance of the bonds in favor of their validity, as we maintain that there are) will exercise their own judgment and follow their own numerous decisions, which hold that when bonds are issued as these are, reciting that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County," such recital is conclusive in favor of a bona fide holder of the bonds that all the conditions precedent to the issuance of the bonds have been fulfilled as required by these sections of the*

Code and constitutes an estoppel upon the county to show otherwise.

The cases are so numerous in this court to the effect that the decisions in a State court rendered *after* the issuance of bonds by some municipality in such State are not binding on the Federal courts that it is not necessary to refer to them at length.

We, may, however, mention a decision of this Court made after certain decisions had been made by so eminently respectable a court as the Court of Appeals of the State of New York, in which this Court distinctly declines to follow the rulings of that Court, these decisions being made with reference to railroad aid bonds.

In *Town of Venice vs. Murdock*, 92 U. S., 494, certain railroad aid bonds issued in 1853 by the Town of Venice, New York, were sued upon in the United States Circuit Court for the Northern District of New York. Bonds like these had been held invalid in the Court of Appeals of the State of New York in *Starin vs. Town of Genoa* and in *Gould vs. Town of Sterling*, 23 N. Y., 439, 456, and by numerous subsequent cases in the Court of Appeals in the State of New York. Notwithstanding this fact, however, these bonds were held good by the Supreme Court of the United States. This Court in giving its opinion, says (page 499):

"We are aware that in the State of New York it has been held adversely to the opinions we have expressed. It was so held in *Starin v. The Town of Genoa*, and in *Gould v. The Town of Sterling*, 23 N. Y., 439, 456. In the former case the court rules, that under the act of April 16, 1852 (the same act which conferred powers conditionally upon the supervisors and commissioners of the town of Venice), the onus was on the bondholder

to show, in a suit against the town, that two-thirds of the resident taxables had given their written assent to the creation of the bonds. In the latter case a similar decision was given when the bonds had been issued under another act, much like the act of 1852, though differing in some material particulars. These decisions are in conflict with the rulings of the court in *Bissell v. Jeffersonville*, 24 How, 287 ; *Knox County v. Aspinwall*, 21 *id.*, 539 ; *Mercer County v. Hackett*, 1 Wall., 83, and other cases which we have cited. They are in conflict also with the decisions in other State courts * * * (p. 501). But assuming that what was ruled in *Gould v. Sterling* and in *Starin v. Genoa* is still the doctrine of the New York courts, we find ourselves unable to yield to it our assent. It is against the whole current of our decisions, as well as against the decisions made in other States; and we think it is not supported by the soundest reasons."

See, also, to the same effect, *Burgess vs. Seligman*, 107 U. S., 20, where this Court says (page 33) :

"When contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, *or when there has been no decision of the State tribunals*, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued."

See, also, to the same effect, *Township of Pine Grove vs. Talcott*, 19 Wall., 666, 677, where this Court said (page 677) :

"It is insisted that the invalidity of the statute has been determined by two judgments of the Supreme Court of Michigan, and that we are bound to follow those adjudications. We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion in the one first decided is unanswered. Similar laws have been passed in twenty-one States. In all of them but two it is believed their validity has been sustained by the

highest local courts. It is not easy to resist the force of such a current of reason and authority. The question before us belongs to the domain of general jurisprudence. In this class of cases this court is not bound by the judgment of the courts of the States where the cases arise. It must hear and determine for itself. Here, commercial securities are involved. When the bonds were issued there had been no authoritative imtimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal. The general understanding of the legal profession throughout the country is believed to have been that they were valid. The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us, that end can be accomplished unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged, and disappoint the wise and salutary policy of the framers of the constitution in providing for the creation of an independent federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

The recital above quoted, in the bonds in question, that they are "*issued by authority of* * * * *Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*," *&c.*, is conclusive in favor of *bona fide* holders of these bonds, that *all the conditions existed* which were prescribed by these sections of the Code as precedent to the issuance of bonds.

That the words "*issued by authority of* Sections 1996, 1997," etc., in favor ot *bona fide* purchasers for

value, import full compliance with these sections of the Code, see opinion of Mr. Justice HARLAN in *Evansville vs. Dennett*, 161 U. S., 434, 442, where he quotes from *School District vs. Stone*, 106 U. S., 183, 187, the well-settled doctrine on that proposition. Same quotation, page 21 of this brief. See also *Waite vs. Santa Cruz*, 184 U. S., 302, to same effect.

That it is immaterial that the bonds also recited the Act of 1887 (even if said act is invalid), see cases exactly in point, *Wilkes County vs. Coler*, 180 U. S., 506, *Evansville vs. Dennett*, 161 U. S., 434, page 18, *et. seq.*, of this brief, and *Anderson County vs. Beal*, 113 U. S., 227, cited page 29 of this brief.

The order of the Board of County Commissioners of Stanly County, under which the subscription was made and the election held and the bonds issued, is set out in full in the record (pp. 19, 20).

Order of Commissioners recites that Citizens of County have an Interest in railroad, and this is conclusive of the fact, whatever these words of the Code may mean.

This order is important, in view of one of the grounds on which the application for this *certiorari* was made—namely, the ground that the County of Stanly, or the citizens of the county, had no *interest* in the railroad in question. The order of the Board of Commissioners expressly finds and recites, *inter alia*, precisely the contrary, as follows (Record, p. 19): "*It appearing that the citizens of said county have an interest in said railroad, it is hereby resolved and ordered*," *etc.*

Therefore, WHATEVER THESE WORDS IN THE CODE MAY MEAN, this recital in the order of the Board of County Commissioners *is conclusive of the existence of the fact that the railroad is one in which the citizens of the county have an interest.* In the language of the Supreme Court of North Carolina in the case of *Belo vs. Commissioners of Forsyth County*, 76 N. C., 489 (1877), a decision rendered before these bonds were issued:

"It is equally clear that the tribunal which was authorized to issue the bonds only on compliance with conditions precedent was the sole tribunal to determine the fact whether the conditions had been fulfilled. This determination of a question of fact by the Justices is manifested in two ways: first, by the records of their court, and second, by the recitals in the bonds issued by them. The Justices were authorized by the act to take the sense of the people, declare the result and issue the bonds. Their declaration spread upon the minutes of the court and made a record is conclusive against the county in favor of all *bona fide* holders without notice."

The Board thereupon ordered an election to be held, as recited in the bond, in accordance with Section 1998 of the Code. The order was carefully considered, and conserved the interests of the county, because it provided that if a majority of the voters voted to subscribe for the stock of the said railroad the bonds of Stanly County should be delivered as follows:

"$25,000 when ten miles is constructed and in operation, from the Rowan County line *into the County of Stanly;* $25,000 when the road is constructed from Salisbury, in said county, into Albemarle; and the remaining $50,000 when the road is constructed from Salisbury into Norwood, in Stanly County," etc. (Rec., pp. 19, 20).

It is admitted on the record, and it is undisputed, that **the railroad was completed and put in**

operation as contemplated in the order and vote of the people of the county. (Record, pp. 5, 14, 20). The subscription was accordingly made and the bonds of Stanly County issued, sold in the market and held by *bona fide* holders.

The county levied taxes and paid the interest on these bonds for more than four years.

At the time when these bonds were issued and sold there was no decision of the Supreme Court of North Carolina, or of any of the Courts of the State, construing Sections 1996–1999 of the Code as not furnishing authority for the issuance of these or similar bonds. On the contrary, there were many decisions of the Courts of North Carolina in line with the decisions in other States and with the decisions of the Supreme Court of the United States in regard to the issuance of county and municipal bonds.

In 1897, years *after* these bonds had been issued and sold, the Supreme Court of North Carolina, in what is called the "Stanly suit"—to wit, the case of *Commissioners of Stanly County vs. Snuggs*, 121 N C., 394 (A. D. 1899), which was a simulated and collusive case, being brought by the Commissioners of Stanly County against the Treasurer of the County of Stanly, and making no bondholder a party, and in which no bondholder was represented or heard, made a decision on which the petitioners in this case rely, the said petitioners being the said Board of County Commissioners of Stanly County, and the said Snuggs being the Treasurer thereof, they being, as above stated, the very parties and the only parties to the suit in the Supreme Court of the State of North Carolina.

In other words, these two petitioners, who are now here on the same side of this case, both claiming that these bonds are invalid—that is, the Board of Commissioners of the County of Stanly and the Treasurer of the County of Stanly—were the very parties, and the only parties, to the Stanly case in the Supreme Court of North Carolina. They were really not adversary parties in that suit in the Supreme Court of North Carolina, but were really both on the same side of the case. The suit was thus really only between different officers of the same body corporate, and there was really but one party before the Court—namely, the County of Stanly; and that was the decision which the petitioners in this case now contend conclusively determined the rights of the holders of these bonds, issued years before that case was decided. The bare statement of the proposition shows its audacious and preposterus character. When that decision is considered, as it is in the opinions of Judges MORRIS and BOYD, Judges of the United States Circuit Court of Appeals (Rec., pp. 81, 89), it is inconceivable that the learned Judges of the Supreme Court of North Carolina would, or ever could, have made such a decision, if the parties in interest had been present or represented—to wit, the bondholders.

The question presented in this case is very short—is the decision of the Circuit Court of Appeals right? If it is it ought to end the controversy, and without reference to the decision in the collusive and simulated case of *Stanly County vs. Snuggs*, to which we have referred, and which is the sole basis for the present defense.

There was lawful statute authority, properly enacted by the Legislature, authorizing the issue of bonds by counties, namely Sections 1996 to 1999 of the Code.

The "power" to issue County railroad aid bonds is expressly given by these sections.

The bonds were issued by the County of Stanly, reciting that they were issued "by authority of * * * Section 1996, 1997, 1998 and 1999 of the Code of North Carolina," and authorized by a majority vote of the qualified voters of Stanly County," etc. This recital is conclusive in favor of the *bona fide* holder of these negotiable bonds that *all the facts* existed which, by the said Sections 1996 to 1999 of the Code, were prerequisite to the issue of the bonds, and the County of Stanly is estopped to deny such facts.

But, furthermore, the order above referred to, entered by the Board of Commissioners of the county, and all the proceedings for the issuance of these bonds show that, as a matter of fact, the conditions existed which, under said Sections 1996 to 1999 of the Code, were necessary in order that bonds might be issued under the authority of the said sections (Rec., pp. 19, 20). The said order of the Board of County Commissioners recites, what was true in fact, that the citizens of the county had an interest in the said railroad, and there is not a particle of evidence, proof, or finding of any kind in the record to show the contrary; but, even if there were, the county is, by the recitals in the bonds, estopped to show the contrary.

II.

The precise proposition that we now state is this: that whatever be the facts and conditions upon which the Code authorized the issuance of county bonds, whether (1) the railroad in aid of which the bonds are to be issued must have been an unfinished road at the time of the adoption of the Constitution, or at the time of the passage of the Act of April 10, 1869 (which afterwards became Sections 1996 et seq. of the Code), or whether (2) the citizens of the county must have had an interest in the road, or whether (3) the taxable property in the county must be such that a tax rate to pay the bonds would not exceed double the State tax rate—in short, whatever may have been the conditions required by the said Code to exist in order to authorize the issue of bonds thereunder—the said express recital in these bonds is conclusive in favor of the bona fide holder of these bonds, that all those conditions existed which were required by the said sections of the Code to exist precedent to the issue of the bonds.

This precise proposition has been repeatedly determined by the Supreme Court of the United States. We need refer only to a single typical case; namely, *Evansville vs. Dennett* (161 U. S., 434). In that case there were two sets of bonds involved. The bonds issued to the Evansville, Carmi and Paducah Railroad Company recited that they were issued:

"by virtue of an act of the general assembly of the State of Indiana, entitled 'An act granting to the citizens of the town of Evansville, in the county of Vanderburg, a city charter,' approved January 27, 1847; and by virtue of an act of the general assembly of the State of Indiana, amendatory of said act, approved March 11, 1867, conferring upon the city council of said city power to take stock in any company," etc.

With reference to the act of March 11, 1867, the Supreme Court of the United States said (p. 439):

"It is certified to us that, under the decision of the Supreme Court of the State of Indiana, this latter act [March 11, 1867] was invalid, because amendatory of a prior invalid act.

"The bonds in question, of both series, were in fact issued in attempted compliance with the act of March 11, 1867, referred to in the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company.

"The ordinances of the city council of the city of Evansville authorizing the issue of both series of bonds disclose that they were issued pursuant to an election by the legal voters of the city of Evansville, but do not recite that any petition of resident freeholders of the city was presented to the common council, as required by the charter; and *no such petition was, in fact, in either case made or presented to the common council of the city of Evansville.*"

That case, therefore, was precisely like the present case in this, to wit, the bonds recited two acts, one the act of March 11, 1867, which was invalid, the other the charter of the city of Evansville, which was valid. The charter of the city of Evansville gave authority to issue bonds on certain conditions. The provisions of the charter of the city of Evansville, however, were not complied with. The bonds, however, recited that they were issued "by virtue of" the city charter; *i. e.*, the act approved January 27, 1847.

On this state of facts the United States Circuit Court of Appeals for the Seventh Circuit, certified to the Supreme Court of the United States, among others, the following questions (161 U. S., 440), the answers of this Court to said questions being enclosed in brackets:

"3. Do the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company, as against a *bona fide* purchaser for value of such bonds, estop the City of Evansville from asserting that such bonds were not issued, for stock subscribed, upon a petition of two-thirds of the resident freeholders of the city, distinctly setting forth the Company in which stock was to be taken, and the number and amount of shares to be subscribed? [Yes].

"4. Under the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company was a *bona fide* purchaser for value put upon inquiry to ascertain whether a proper petition of two-thirds of the residents of Evansville, freeholders of that city had been presented to the Common Council before that body had subscribed for stock in the said railroad company? [No].

"5. Was a *bona fide* purchaser for value of the bonds issued to the Evansville, Carmi and Paducah Railroad Company charged by the recitals in said bonds with notice that they were issued in pursuance of an invalid act, and in pursuance of an election under it [No], or **had such a purchaser a right to assume, from the recital, that the prerequisites of both the valid act and the invalid act had been observed by the Common Council before the issuance of such bonds? [Yes].**

Note the precise question presented to the Supreme Court of the United States in the case of *Evansville vs. Dennett* under said certified question No. 5, above quoted, was whether the purchaser had a right to assume from the recital that the prerequisites of both the valid act, namely, the charter of the city, and the invalid act, namely, the Act of March 11, 1867, had

been observed by the common council before the issuance of the bonds, this question being the latter half of question No. 5. The Supreme Court of the United States answered "Yes." We will not quote here the entire language of the case. It is enough here to repeat the quotation made by Mr. Justice HARLAN in giving the opinion. He says (p. 442), quoting from *School District vs. Stone*, 106 U. S., 183, 187:

"'Numerous cases have been determined in this court, in which we have said that, where a statute confers power upon a municipal corporation, upon the performance of certain prece'ent conditions, to execute bonds in aid of the construction of a railroad, or for other like purposes, and imposes upon certain officers, invested with authority to determine whether such conditions have been performed, the responsibility of issuing them when such conditions have been complied with, recitals by such officers that the bonds have been issued 'in pursuance of' or 'in conformity with,' or 'by virtue of' or 'by authority of' the statute, have been held in favor of *bona fide* purchasers for value to import full compliance with the statute, and to preclude inquiry as to whether the precedent conditions had been performed before the bonds were issued (*Town of Coloma vs. Eaves*, 92 U. S., 484; *Commissioner vs. Bolles*, 94 U. S., 104; *Mercer County vs. Hacket*, 1 Wall., 83; *Anderson County Commissioners vs. Beal*, 113 U. S., 227, 238-9, and authorities there cited; *Cairo vs. Zane*, 149 U. S., 122)."

We say, therefore, that, *whatever be the conditions or circumstances* required to exist by the Code precedent to the issuance of these bonds—whether the road must have been an unfinished road at a certain time, whether the citizens of the county must have had an interest in the road, or whether the taxable property in the county must be such that a tax rate to pay the bonds would not exceed double the State tax—in short, whatever conditions are required by these Code sections—the recitals in the bonds gave the

purchasers thereof "the right to assume that the circumstances existed which authorized the county to exercise the authority given by the Legislature" (see *School District vs. Stone*, 106 U. S., 183, 187, quoted *supra*).

This proposition is conclusive in favor of the holders of these bonds. The act—namely, the said sections of the Code—was valid, and admitted to be valid by all Courts and all parties. Said sections gave authority under certain circumstances to issue bonds, and the recital is conclusive in favor of *bona fide* purchasers that those circumstances existed.

Objection of Counsel for County Answered.

The learned counsel for the County of Stanly, in his supplementary brief filed in the Supreme Court of the United States when the *Wilkes County case* (reported in 180 U. S., 506) was heard, attempted to make the point that these bonds show on their face that the road was not begun before the adoption of the Constitution of North Carolina—in 1868. His argument was as follows: That the bonds in the present case recite the act of March 3, 1887—namely: "An act to amend the charter of the Yadkin Railroad Company." He then makes the further proposition that the purchaser is charged with notice of the original charter of the Yadkin Railroad Company (not recited in the bond), and that, if this original charter is examined, it will be found to be Chapter 236 of the Acts of 1870, which was enacted after the Constitution was adopted.

This argument, however, is clearly insufficient. A purchaser of the bonds, reading the bond, would, it is true, see that the Act of March 3, 1887, is recited. It

would then be his duty, under the decisions of the Supreme Court of North Carolina, to examine the journals of the Legislature of the State of North Carolina to see whether those journals showed that the said act was properly enacted, and, on examining such journals, he would find that it was not properly enacted. This purchaser might then drop the matter of this act to amend the charter of the Yadkin Railroad Company, and go no further on that act. He could then proceed to examine Sections 1996 *et seq.* of the Code, and it would then be his duty to examine the journals of the Legislature to see whether said sections of the Code were properly enacted. Having found that said sections were properly enacted, then he finds the recital in the bonds to be that the bonds are issued *by authority of the said sections.* Now, our proposition is that, under the repeated decisions of the Supreme Court of the United States, the purchaser of the said bonds need go no further. He need not go back and examine all the pre-existing legislation, the charter of the railroad company, the question whether the railroad had been begun before the Constitution was adopted, or before April 10, 1869, when the statute which is now the Code sections was originally enacted. If he had made such inquiry he might have found that the railroad was begun before the adoption of the Constitution, even although the charter of this particular railroad company had not been granted until afterwards. The decisions of the Supreme Court of North Carolina, even at their utmost do not decide that the railroad *company* which owns the railroad in respect of which the bonds are issued must have been *chartered* before the adoption of the Constitution. The only requirement, at the utmost, is that the *railroad* should have been begun before the

adoption of the Constitution. Nothing appears on the face of these bonds, and nothing appears from the legislation therein recited, to show that the railroad in question may not have been begun long before the adoption of the Constitution.

But all this, under the decision of the Supreme Court of the United States in *Evansville vs. Dennett, supra*, is a matter which the *bona fide* purchaser of these bonds, under the recitals therein contained, need not concern himself. As soon as he has found these Sections 1996 *et seq.* of the Code, and has found that they give authority to issue bonds under such circumstances therein mentioned, and has found from the journals that these sections of the Code were properly enacted by the legislative body, he has then a valid act, properly enacted, authorizing the issue of these bonds, and as the bonds recite that they are issued by authority of that act, this recital is conclusive in his favor.

It makes no difference in this respect that the bonds also recite the invalid act of March 3, 1887. Such was the precise fact in *Evansville vs. Dennett* with respect to the invalid act of March 11, 1867, recited in the bonds in question in the said Evansville case. The decision of the Supreme Court was to this effect, that, although this invalid act was recited, the purchaser of the bonds

" had a right to assume from the recital that the prerequisites of both *the valid act* and the invalid act had been observed by the common council before the issuance of the bonds " (p. 440).

Recital of the Act of March 3, 1887, in the Bonds is Immaterial.

It is immaterial that the bonds in question in the present case (Record, page 7) recite that they were issued by authority of the Act of March 3, 1887, as well as of Sections 1996–1999 of the Code, for it is well settled law that if there was in fact legislative or legal authority for the issue of bonds it is immaterial that the bonds recite another act which did not give such authority.

This express proposition was considered and once more reaffirmed and decided by this Court in the case of *Wilkes County vs. Coler*, 180 U. S., 506, 524.

The principle on which this proposition rests is this namely, it was not necessary that the bonds in question should recite any act under which they were issued. Any recital of the Act of March 3, 1887, therefore, being useless, could be rejected as surplusage without vitiating the necessary and substantial parts of the bonds. This is under the familiar rule of law expressed in the legal maxim *Utile per inutile non vitiatur.*

See also to the same effect *Anderson County Commissioners vs. Beal*, 113 U. S., 227, a case directly in point; also *Evansville vs. Dennett*, 167 U. S., 434, also exactly in point, quoted *supra*, p. 18; also *Knox County vs. Ninth National Bank*, 147 U. S., 91; and *Cairo vs. Zane*, 149 U. S., 122.

The foregoing proposition we regard as conclusive of this case in favor of the holders of the bonds. It is a proposition which is decisive of the case.

The foregoing proposition was not considered by the Supreme Court of North Carolina in the case of *Commissioners of Stanly County vs. Snugge*, 121 N. C., 394, 1899; but even if it had been considered in that case and that Court had arrived at a different conclusion, such conclusion would not have been binding in the Federal Courts, for that decision was rendered long after these bonds were issued.

Nevertheless, we have thought it proper in this Court to go into the case at length, and, therefore, we have below stated somewhat at large the various arguments to show that even if the county is not estopped by the recitals in the bonds, the bonds are nevertheless valid and enforceable.

III.

There was lawful authority for the issue of these bonds in the present case UNDER THE CODE, **sections 1996 to 2000. These sections of the Code were originally passed as the act of April 10, 1869. They were afterwards adopted as sections 1996 to 2000 of the Code of North Carolina of 1883. It is admitted by all that these sections of the Code, 1996 to 2000, were adopted in accordance with the constitution as respects the three several readings and the entry of yeas and nays upon the journal, etc.***

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* The said Act of April 10, 1869, and the sections of the Code, and the relevant provisions of the Constitution of the State are reprinted in the APPENDIX to this brief.

The Supreme Court of the United States, in *Wilkes County vs. Coler*, 180 U. S., 506, was careful in answering the first question to say that the Federal Court should follow the decisions of the State Supreme Court as controlling upon the inquiry whether legislative enactments of 1868, 1879 and 1881 were passed in such manner as to become, under the Constitution, laws of the state, and thus the Supreme Court limited the effect of these decisions of the State Supreme Court to the point whether they had become laws of the State under Article II., Section 14, of the Constitution. The Supreme Court of the United States, by thus carefully limiting its answer to the first question, has, in effect, stated that these decisions of the Supreme Court of the State of North Carolina, as to the *construction* of the sections of the Code, are not to be controlling in the Federal Courts, and hence the general rule applies that the Federal Courts should either follow the decisions which were in existence when the bonds were issued, if there were any, or, if not, then they should consider the questions for themselves, and they are not bound by any subsequent decision of the State Supreme Court.

See paragraph (B) under Point I. of this Brief, *supra*, page 9.

Hence, decisions of the Supreme Court of North Carolina *construing* the Code, made *after* the bonds in question were issued, do not bind the Federal Courts, if such subsequent decisions of the Supreme Court of North Carolina are not intrinsically sound or not in accordance with the general principles of jurisprudence, but the Federal Courts may, and should, exercise their own independent judgment. There is a long line of decisions to that effect in the Supreme Court of

the United States, and these decisions relating to the construction of statutes are expressly recognized and distinguished by the Supreme Court of the United States in its opinion.

Notice that in *Wilkes County vs. Coler*, 180 U. S., 506, the Supreme Court says, referring to the acts of 1868, 1879 and 1881, as follows (519):

"Observe that the issue is not as to the construction, meaning or scope of a statute, but whether that which purports to be a legislative enactment ever became a law for any purpose."

Under this decision of the Supreme Court of the United States, the Federal courts, of course, are not bound by the decision of the Supreme Court of North Carolina construing the Code *after* the bonds were issued.

The provision of the Constitution of North Carolina requiring (see Art. VII., Sec. 7, in the Appendix to this Brief), "a vote of a majority of the qualified voters therein" [i. e., in any county, city, town or other municipality contracting the debt], and the similar provision in the Code (see Sec. 1996-2000 in said Appendix) were complied with in the present case.

EACH BOND RECITES (Record, page 7) that it is "*authorized by a majority vote of the qualified voters of Stanly County*," etc.

THE COMPLAINT in the suit in the State Court (Record, page 17) also alleges, in Paragraph 3, an order submitting the question of the issuance of these bonds "*to a vote of the qualified voters of the said county*," and in paragraph 4, "That by virtue of the above order

an election was held on the 15th day of August, 1889, in the said county, and the question was submitted in the form of 'Subscription' or 'No subscription.' That said election resulted in *a majority of the said qualified voters voting in favor of 'subscription.'*"

THE ANSWER of the County Commissioners in the State Court suit (Record, page 22) admits the truth of these allegations of the complaint.

The said bonds recite that they are issued by authority of the Act of March 3, 1887, and also by authority of Sections 1996–1999 of the Code, and a majority vote of the qualified voters of the county at an election duly ordered and regularly held. But the recital of the act (if that Act of March 3, 1887, be held not to give authority) would not invalidate the bonds, if they were, in fact, authorized by some other act, as Sections 1996 to 2000 of the Code, now under consideration, nor would it render ineffective the recital of the election.

See *Anderson County vs. Beal*, 113 U. S., 227, where the wrong act was recited. In that case this Court, notwithstanding the bonds recite the wrong act, held, as respects the recital of the election, as follows, to wit (p. 239):

"In view of all this, the statement by the commissioners in the bond that it is issued 'in pursuance of the vote of the electors of Anderson county of September 13, 1869,' is equivalent to a statement that 'the vote' was a vote lawful and regular in form, and such as the law then in force required in respect to prior notice."

See, also, the cases exactly in point, *Evansville vs. Dennett* in this Brief *ante*, POINT II, and *Wilkes County vs. Coler*, 180 U. S., 506, 524–525.

This recital, therefore, of "a majority vote of the qualified voters of Stanly county" at an election

"duly ordered" and "regularly held" (Rec., p. 7) in this Stanly County bond is a recital of such a vote as is required by the Constitution and by Sections 1996 to 2000 of the Code, and is conclusive in favor of the *bona fide* holders of these bonds, as was held in the said cases of *Anderson County vs. Beal* and *Evansville vs. Dennett, supra.*

Sections 1996 to 2000 of the Code do not Violate Article 5, Sections 6 and 7, of the Constitution as to "Special purpose," "Special object," or "Special approval" of the General Assembly.

Said Sections 6 and 7, Article 5, of the Constitution are as follows :

SECTION 6. "The taxes levied by the Commissioners of the several counties for county purposes, shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly."

SECTION 7. "Every act of the General Assembly levying a tax, shall state the special object to which it is to be applied, and it shall be applied to no other purpose."

It was objected by the State Court in the case of *Commissioner vs. Call* (123 N. C., 308), and in *Commissioners of Stanly County vs. Snuggs* (121 N. C., 394, 400, 401), cited in the *Call Case*, page 323, that these provisions of the Code are a *general* act, and as such violate Article V., Sections 6 and 7, of the constitution (quoted, *supra*), which provides, in substance, that taxes levied by the commissioners of the several counties for county purposes shall be levied in like

manner as the State tax, and shall never exceed the double of the State taxes, except for a special purpose, and with the special approval of the General Assembly, stating the special object to which the tax shall be applied.

(a) **In the present case, however, there is not a word or syllable in this record to show that the county tax necessary for these bonds would exceed double the State tax; therefore, the question does not arise.**

(b) **If, however, it had been shown in the record in this case that the county tax for these bonds might exceed double the State tax, then these bonds are, nevertheless, valid:**

FIRST, *because the Code does not violate the provisions of Article V., Section 6 and 7, of the Constitution above quoted.* The constitution only requires that the Legislature give special approval to the special purpose for which any tax is levied in excess of the rate named, but such special approval may be given as to all the counties, as well as to any one county, the object of the provision of the constitution being to require the special assent of the Legislature to the special purpose. If the rate referred to in Article V., Section 6, is to exceed the double of the State tax, this section requires the Legis-

lature to specify the special purpose for which it may so exceed the State tax. The Legislature could not authorize such excess by an act, general or special, which only named county purposes generally, and did not specify the special or particular purpose, *but it is not necessary that the Legislature should in each instance specify by name any particular county or counties.*

The specification required is only a specification of the *special purpose.* Legislative authority to subscribe for the stock in a railroad company and issue bonds in payment of such subscription is a "special purpose" within the meaning of this section, *and so the sections of the Code, 1996 to 2000, being the act of April 10, 1869, do specify the special purpose* for which the tax is to be levied. It is not necessary to name by name each particular county. If these sections of the Code had provided that the county commissioners of the county, A, B, C, D, etc., naming all the counties in the State, should have power to subscribe for stock in any railroad company, etc., obviously this would be good, for the very Section 6, Article V., of the Constitution referred to, contemplates that such taxes may be levied by all "the several counties" of the State. The Constitution does not say that any "special act" is required, but only requires that *the purpose* be specified, and that the tax and the purpose have the special approval of the General Assembly.

The proposition of the Supreme Court of North Carolina on this point seems to be, in effect, that if the Legislature passes a special act for each county in the State; that is to say, ninety-five acts, each act exactly alike, except that one act applies to one county and another to another, and so on through all the ninety-five acts, the legislation is good; but if the

Legislature, instead of doing this, enacts precisely the same act and says that this act shall apply to all counties in the State, then such an act is bad. Such a view is, of course, intrinsically unsound, and, if that be the view of the State Supreme Court, the Federal Courts cannot be expected to follow it as to negotiable bonds issued *before* such State decision was made.

BUT, SECOND, *however this point may be decided, a ruling one way or the other would not invalidate these bonds. A bond may be a valid obligation, although there is not sufficient tax to pay it.*

Such bonds could be paid by as much tax as could be levied, and, if at any time the Legislature did pass a special act giving its special approval to the levy of a further tax, then the defect of a lack of power to tax would be removed, if such defect existed. Therefore, on this point the objection raised by the Supreme Court of North Carolina must fall. That there may be bonds which are valid, although there is a tax-rate limit, is well settled (see *United States vs. Macon County*, 99 U. S., 582). Article V., Section 6, of the Constitution of North Carolina is a mere limitation upon the tax rate, such as was involved in this case of *United States vs. Macon County*, just cited, where the tax rate limit was not exceeding one-half of one per cent., and the bonds were held valid.

Under the decisions of the Supreme Court of North Carolina this constitutional provision does not affect the validity of the bonds, and in no view of the case could affect more than the method of having a valid, existing and binding obligation *paid*.

"The legislative practice has uniformly been, as far as we know, to give approval in advance, and thus

confer the requisite legal authority to levy special taxes beyond the assigned limits, though, if given after the levy, it would doubtless be equally effectual" (*Cromartie vs. Commissioners*, 87 N. C. Reps., on p. 140).

And in *Herring vs. Dixon*, 122 N. C., on page 423, the Supreme Court of North Carolina again distinguishes between the power to contract a valid indebtedness without special legislative sanction and the power to levy a tax to pay said indebtedness when it says:

"In *Vaughn vs. Commissioners*, 117 N. C., 429, while it was held that the commissioners could *incur a debt* for necessary expenses, without a vote of the people, it was not held that they could *levy a tax* in excess of the constitutional limit to pay it without special approval of the legislature."

So under the rulings of *Cromartie vs. Commissioners* and of *Herring vs. Dixon* the commissioners have the right to contract a valid debt without a special act, but only the process of collecting its payment would be affected by section 6, article 5, of the Constitution.

But this argument is unnecessary, as the record contains no evidence whatever that the payment of this obligation by the county will require a tax exceeding double the State tax.

FURTHERMORE, THIRD *even if there be this tax-rate limit in Article V., Section 6 of the Constitution of North Carolina, that is a mere limit. It does not appear as a matter of law on the face of the Constitution, or on the face of these Sections of the Code, or on the face of these bonds, that in the instance of these particular bonds of Stanly County the tax-rate limit would*

be exceeded. Whether or not this tax-rate limit would, as a fact, be exceeded, as a matter of pais, of which the holder of a negotiable bond, like the bonds in question in the present case, is not bound to take notice (See Point I. of this Brief, *supra*). Moreover, as above stated, there is no proof in the present case that the county tax for these bonds would exceed double the State tax.

These Sections of the Code are PROSPECTIVE IN THEIR OPERATION, **and they are not limited to any railroad which has been begun either before the constitution of 1868 was adopted or before the adoption of these Sections of the Code by the Act of April 10, 1869.**

The language of Section 1996 of the Code is: "The Board of Commissioners," etc., "*shall have* power to subscribe stock," etc., to aid in the completion of any railroad in which the citizens of the county *may have* an interest." *All this is future.* It applies to any railroad in which the citizens of the county may have an interest, either when the act was adopted *or at any time afterwards.* **The substance is that the interest is one which exists at the date of the election.** There is nothing in this language which restricts the operation of the act either to the time of the adoption of the constitution of 1868 or to April 10, 1869, the time of the first enactment of the statute which became these provisions of the Code. Any of the recent decisions of the Supreme Court of North Carolina to the contrary are wholly indefensible, and have no support in the language of these sections

of the code. Inasmuch as all of these decisions were rendered after these bonds were issued, they are not binding upon the Federal Courts (See *Folsom vs. Ninety-Six*, 159 U. S., 61, and numerous other cases in this Court).

Erroneous Construction of the Word "Completion," in Section 1996 of the Code by the Supreme Court of North Carolina in its Late Decision in the *Stanly County Case*, 121 N. C., 394, 1899.

The Supreme Court of North Carolina, at this late day, in *Commissioners of Stanly County vs. Snuggs*, 121 N. C., 394 (1899), has taken a very narrow view of the word "completion." It has undertaken to say that these sections of the Code refer only to a railroad which had been begun, and that the word "completion" is not synonymous with "construction," but that the language here requires that there must have been an unfinished road.

The Court went further, and held that there must have been a road unfinished *at the time of the adoption of the constitution*, April 24, 1868, in order that these sections of the code might have application. This interpretation of the word "completion," we submit, is not the correct one.

It seems obvious that it is used as synonymous with the word "construction." This view is supported by the obvious difference between this language and the language used in the state constitution as respects the issue of state railroad aid bonds. Article V., Section 4, of the constitution prohibits the issue of State railroad aid bonds, "except to aid in the completion

of such railroads as may be *unfinished at the time of the adoption of this constitution*" (See Appendix to this Brief). Section 1996 of the Code, adopted April 10th, 1869, about one year after the framing of this provision of the state constitution, omits the significant words—namely, "unfinished at the time of the adoption of this constitution." On no possible theory can these words be read into the statute. The legislature did not put them there, and the courts cannot put them there.

The opinions of SIMONTON, J. (Rec., p. 50), of MORRIS, J. (Rec., pp. 86 87), and of BOYD, J. (Rec., pp. 95–97), contain able and satisfactory discussions of this point as well as the question of "interest of the citizens of the County," to which opinions we especially refer this Court.

Further, as to "completion" required by the Code, see this argument (*post* p. 52), answering the positions of the counsel for the county on this point.

Erroneous Construction in the *Stanly County Case* by the State Supreme Court of the Words "any Railroad in which the CITIZENS OF THE COUNTY MAY HAVE AN INTEREST," in said Section 1996 of the Code.

The Supreme Court of North Carolina held in the *Stanly County Case* (121 N. C., 394, 1899) that the words of Section 1996 of the Code, "the citizens of the county may have an interest," do not mean exactly what they state, but hold that they require that the county, *as a county*, shall have a *pecuniary* interest in the railroad, in order that Section 1996 may apply to it. On this point it seems only necessary to state that

no such words occur in Section 1996. This construction by the Supreme Court of North Carolina takes out the words "*the citizens*" and inserts the word "*pecuniary*," and thus it holds that the words "any railroad in which the citizens of the county may have an interest" are to be construed as follows, to wit: "Any railroad in which the county has a pecuniary interest." A mere statement of such a distorted construction of this language of the Code is enough to refute any such construction.

Here, too, again we may call the attention of this Court to the language of Article V., Section 4, of the Constitution of the State of North Carolina when it was dealing with the question of the right of the State to issue railroad aid bonds. There it refers to a railroad "in which the State has a *direct pecuniary interest*. [For text of said Section 4, see Appendix to this Brief]. This Section 1996 of the Code was adopted about one year after the said Article V., Section 4, of the Constitution. Doubtless the legislators had before them this provision of the constitution, or, at least, were familiar with it. The difference in the language was obviously intentional and significant.

The history of the adoption of this provision of the State Constitution (Art. 5, Sec. 4) as to State Railroad Aid bonds shows that it had a different purpose from that of the Code (§§ 1996-2000).

What is now Section 4 of Article V. of the constitution was originally reported to the Constitutional Convention of 1868 by the committee on finance as follows:

"Until the bonds of the State shall be at par, the General assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State,

except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall be in the same bill levy a special tax to pay the interest annually" (Journal, p. 354).

An amendment was proposed as follows:

"And the General Assembly shall have no power to give or lend the credit of the State in aid of any person association or corporation, except to aid in the completion of such railroads and other works of internal improvement as are unfinished, and in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon" (Journal, p. 354).

This proposed amendment was further amended as follows:

Mr. Tourgee moved to amend by striking out "are" in the fifth line and inserting "may be;" insert after the word "unfinished" in the fifth line "*at the time of the adoption of this constitution.*" Strike out "and" in the fifth line and insert "or." This amendment of Mr. Tourgee's was accepted, and the proposed amendment, as amended, was adopted (Journal, p. 354).

On pages 85 to 90 of the convention journal is a report made January 29th, 1868, by the Treasurer of the State to the President of the convention as follows:

"SIR—I have the honor, in response to the resolution of your honorable body requesting me to furnish the convention a 'statement of the indebtedness of the State, to what parties or sources, what amount to each, what is the amount of her indorsement for railroad or other improvements, what further indorsement of railroad bonds she is directed to make under any existing law or regulation, and, when passed, what property, or assets, or securities, said State holds for or on account of said indebtedness, what amount of stock the State holds in the several corporations of this State, and

what amount of dividend or interest she receives annually from each source.'" * * *

The report of the State Treasurer shows that, prior to the meeting of the convention, the State had undertaken to issue its bonds in aid of certain railroads, and that, under the statutes then existing, the State was liable to be called upon for the issue of additional bonds, or for the guaranty and payment of additional bonds, and the State owned stocks in certain railroads, thus having a direct pecuniary interest in them. The amendment made to Section 4, Article V., of the Constitution above quoted was designed to enable the State, *without a vote of the people*, to carry out its contracts already entered into on railroads, &c., already begun and to protect its interests in the railroads, &c., already begun. *With a vote of the people* the State was allowed to aid railroads without restriction.

As the Constitution, Article VII., Section 7, did not allow counties to incur any debt in any case (except for necessary expenses) without a vote of the people, the reason for the provision as to *unfinished* railroads in case of State aid, did not apply to counties, and was purposely omitted in the Act of April 10, 1869 (now Sections 1996–2000 of the Code).

Our view is supported by the following decision rendered by the North Carolina Supreme Court in 1869, the year following the Constitutional Convention.

In *Galloway vs. Chatham Railroad Company*, 63 N. C., 147, the suit was to enjoin an issue of State bonds in aid of the railroad company. The Court held that the bonds were unauthorized under the provisions of the constitution. In the course of the opinion

(PEARSON, C. J., giving the same) the Court say, with respect to the restrictions on the power of the State to incur debt, speaking of the debt existing at the time of the adoption of the Constitution of 1868 (p. 153) :

"It will be found that most of the public debt was incurred in three modes : 1st, by subscribing for stock in railroad and navigation companies, and issuing bonds to pay for the stock, the state becoming a member of the corporation : this is the heaviest item, and amounts to, say, eight millions of dollars ; 2nd, by issuing bonds of the state and exchanging such bonds for a like amount of the bonds of the corporation, the state not becoming a stockholder and taking collateral security of more or less value ; this is the next heaviest item, and amounts to about three millions of dollars ; 3d, by endorsing the bonds of corporations and taking a mortgage or some other collateral security ; this item amounts to about two millions.

These are the three modes by which, judging from the past, it was apprehended the public debt might be so run up as to ruin the credit of the state and tarnish her honor and her reputation for good faith.

* * * (p. 155). The suggestion that the credit of the state was given by this statute to aid in the completion on an *unfinished railroad* was not strongly urged on the argument, and indeed it could not be. An unfinished road is one that has been begun and partly worked on, and such a road is made an exception, on the ground that it might be proper to finish it in order to prevent a sacrifice of the work that had been done. There is no evidence that such was the fact in regard to this road. The other suggestion, that the state has a direct pecuniary interest in this road, was properly abandoned. The word '*has*' is in the present tense. The exception is obviously confined to roads in which the state had a direct pecuniary interest at the time of the adoption of the constitution ; otherwise, the state might, by a subscription for stock, become directly interested in every railroad or navigation scheme that should thereafter be projected, and thus the restrictions of the constitution would be of no effect whatever."

Note the difference between the language of the Constitution (Art. 5, Sec. 4) as to *State* aid bonds and the

language of the Code as to *county* aid bonds. The Constitution says '*has*,' and note the comments of the Court on the present tense. The Code says "*may have*," &c., &c.

Of course such of these decisions of the Supreme Court of North Carolina as were rendered after the bonds in question in the present case were issued are not binding upon this Court, and it is both the right and duty of this Court to construe this language of Sections 1996–2000 according to its natural and proper meaning.

Observe that the language of Section 1996 of the Code is not any railroad in which the *county* may have an interest, but any railroad in which *the citizens of* the county may have an interest; and therefore any financial interest of the county itself as a corporate body in the railroad, which is contended for by the learned counsel for the county, is utterly out of the question. Any such construction disregards the words "the citizens" and strikes them out of the statute.

The interest which Section 1996 of the Code contemplates that the citizens of a county may have in a railroad to be aided is clearly not a financial interest as stockholders. It would be the height of absurdity to suppose that this section of the Code meant that ALL *the citizens of the county must be stockholders* in a railroad, and thus have a financial interest in the railroad as a condition precedent to the county subscribing stock to the company. What an absurdity to suppose that this section of the Code contemplated that every man, woman and child in the county should own stock in the railroad company before the county could subscribe stock to the company.

Neither can Section 1996 of the Code contemplate

that it is necessary that *some* citizens of the county have a financial interest in the railroad *as stockholders* as a condition precedent to the county subscribing stock to the company. If this section read in this way, then if *some* citizens of the county owned stock in a railroad company which did not touch the county, and which was fifty or a hundred, or even two hundred miles distant from the county, nevertheless the Section 1996 of the Code so construed would give power to the county to subscribe to the stock.

None of these absurdities was intended by said Section 1996 of the Code. The word "interest" in this section must be construed in a rational way with reference to the subject matter, and when it is so read, it is clear that the interest spoken of is **the interest that the citizens of the county might have in any public improvement.**

"What else does this doctrine mean, if not that building a railroad, though it be built by a private corporation, is an act done for a *public use?* And the reason why the use has already been held a public one is that such a road is a highway, whether made by the government itself or by the agency of corporate bodies, or even by individuals, when they obtain their power to construct it from legislative grant" *(Olcott vs. Supervisors*, 16 Wallace, 678).

Within the meaning of Section 1996 of the Code the citizens of a county have an interest in any railroad running through the county, and which would thus be a public benefit to such county and its people.

No "policy" of the State against Railroad Aid Bonds. Provision as to "unfinished" Railroads Applies Only in Case of State Aid Bonds.

The learned counsel for the county has heretofore attempted to make an argument that there was a *policy* of the State of North Carolina, as evidenced in the constitution of that State, adopted in 1868, against issuing railroad aid bonds by either the State or counties, except in aid of roads which were unfinished at the time of the adoption of the constitution. There was no such policy. The policy was just the contrary. The policy was this—that no State bonds should be issued to aid any *new* railroads unless there should be a vote of the people, but with such a vote the State could aid any railroad, whether it had been begun or not at the time of the adoption of the constitution. If the railroad had been begun and was unfinished at the time of the adoption of the constitution, State bonds might be issued in aid thereof without any vote of the people.

As to counties, there was no distinction made as to whether the road was finished or unfinished at the time of the adoption of the Constitution. A vote of the people of the county was required for the issuance of railroad aid bonds of a county in either case, whether a road had been begun or was a new railroad, and there was absolutely no distinction whatever made in the Constitution between new roads and unfinished roads so far as respects county aid, and no such distinction existed in the Code, or in any other provisions of the statute. Thus the public, constitutional policy was to allow the issue of county railroad aid bonds in

any case on a vote of the people (Art. II., Sec. 14; Art. VII., Sec. 7, quoted in APPENDIX, *post*, pp. 72, 74).

Even the learned counsel for the county would admit that if there had been a special act authorizing the issue of these bonds, or if the act of March 3, 1887, had been properly enacted by the Legislature, there would have been clear constitutional power to issue these bonds. How, then, can the learned counsel seriously argue that the Constitution of the State of North Carolina has adopted any policy as against the issue of county railroad aid bonds.

Further, as to Code Sections 1996-2000. These sections give power to issue the bonds. The objections of the County further answered.

The learned counsel for the county in his previous argument in this case, said in substance, in regard to the Code provisions, Sections 1996 to 2000, originally adopted April 10, 1869, these are to be construed the same as the provisions in the Constitution of the State, Article V, Section 4, in regard to the issue of railroad aid bonds by the State, stating: "It was deemed a part of the policy of the State to place its subdivisions under the same restrictions as the state, by preventing them from aiding in the completion of a road not then begun." There is not anything in the Code or in any of the statutes or in the Consti-

tution of the State which supports any such view. The significant language of Article V., Section 4, of the Constitution of the State, as applied to *State* railroad-aid bonds, is purposely omitted when the Constitution deals with *County* bonds in Article VII., Section 7, and is purposely omitted from the said provisions of the Code.

The Supreme Court of North Carolina, in *Commissioners of Stanly vs. Snuggs*, 121 N. C., 394, 1899, committed an obvious and glaring error in holding that the same provisions applied to a *County* as to the *State*.

We may note in passing that the learned counsel for the County, in dealing with Article V., Section 4, of the Constitution of North Carolina in connection with his argument in respect of Code Sections 1996 to 2000, would omit the significant words "*a direct pecuniary*," so that he would make a clause in that section, as respects State aid, read "a railroad which may be unfinished at the time of the adoption of the constitution, or in which the state has *an interest*," whereas that section of the Constitution really reads, "except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution, or in which the state has a *direct pecuniary* interest, unless the subject be submitted to a direct vote of the people of the State," etc. The claim of the learned counsel—that a "direct pecuniary interest" is required in the case of *County* bonds—is erroneous, and the decision of the Supreme Court of North Carolina in the case of *Stanly County vs. Snuggs*, 121 N. C., 394, is plainly erroneous.

The learned counsel for the county speaks of the case of *Stanly County vs. Snuggs*, 121 N. C., 394, and says, in substance, that in that case the words in Code

Section 1996, Act of April 10, 1869, "in the completion of any railroad in which the citizens of the county may have an interest" were construed as speaking of railroads *unfinished* at the time of *the passage of the act or the adoption of the constitution.* The fact is the Court, in the case of *Stanly County vs. Snuggs*, held that those words in the Code were retroactive and went back to the time of the adoption of the Constitution (April 24, 1868), although there was not a word or syllable in the said Code, or in the Act of April 10, 1869, to indicate that they were intended to have any such retroactive effect. The learned counsel has argued in his briefs heretofore presented:

"It was deemed a part of the *policy* of the state to place its subdivisions under the same restrictions as the state, by preventing them from aiding in the completion of a road not then begun."

The fact is that there was "no policy of the state" to prevent a county from aiding in the completion of a road not begun at the time of the adoption of the Constitution, or at the time of the passage of the Act of April 10, 1869, nor even to prevent the *State* from aiding such road. The restriction was that a *county* should not aid any road begun, or not begun, unless by a vote of the people. The restriction on the part of the State was less than this—to wit, the State was permitted, *without* a vote of the people, to aid any railroad which had been then begun, and was permitted to aid *any* railroad (begun or not begun) *with* a vote of the people.

The learned counsel for the county would omit from his quotation of Article V., Section 4, of the Constitution, the significant words "*a direct pecuniary*" [interest], which apply only to *state* railroad aid *without*

a vote of the people, and then goes on seriously to argue that the same direct pecuniary interest is necessary in the case of aid by a county, although neither the code nor the constitution makes any such provision. The bare statement of such an argument is enough to refute it.

Mistake of counsel for the county in stating that the construction given Section 1996 of the Code by the United States Circuit Court of Appeals makes part of said section surplusage.

In the brief of the learned counsel for the county it is stated in substance that half of Section 1996 is declared surplusage by the United States Circuit Court of Appeals in order to lean against the construction given by the State Court. This is clearly an error. The part of Section 1996 which the learned counsel for the county seek to show is regarded as surplusage by the United States Circuit Court of Appeals is the last part, to wit : " when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." If these words were rejected, the section would then read : "The Boards of Commissioners of the several counties shall have power to subscribe stock to any railroad company or companies." This would allow a county in the extreme western part of North Carolina to subscribe to stock of a railroad company in the extreme eastern part of North Carolina, hundreds of miles from the subscribing county. No one contends or has contended for any such construction of Section 1996 of the Code. The construc-

tion given to this Section 1996 of the Code by the United States Circuit Court of Appeals and the proper construction of the said section is that these words, " when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest," do have a meaning and they mean that stock can only be subscribed to aid in the completion of a railroad in which the citizens of the county **are interested as a public improvement for the use and good of the public.** The words in Section 1996 are fit and apt to express exactly this meaning and they do not require any other meaning to be given to them. This is the natural meaning, a meaning which gives to the section a practicable construction, and not one which gives it an impracticable construction such as is contended for by the learned counsel for the county. The learned counsel for the county must reject altogether the words " *the citizens* " and strike them out of this section in order to give to the section the meaning for which they contend. They must also insert before the word interest the word " pecuniary " in order to have any such construction given to this section of the Code as they contend for.

Thus, it is clear that it is not the construction which was given to this Section 1996 of the Code by the United States Circuit Court of Appeals, but the construction which the learned counsel for the county would place upon the section which does violence to the language of the section and strikes out part of the section and inserts words which are not found there.

The numerous decisions cited by the learned counsel for the county to show what the words " interest " or " interested " mean when used in other statutes relating to other matters have absolutely no bearing

whatever on the construction of the word interest in Section 1996 of the Code.

We notice that the learned counsel for the county find it necessary as a part of their argument to support their construction of Section 1996 of the Code to advance the proposition that the citizens of the county, "*by reason of vicinage, had no other or greater interest*" in a railroad running near or through the county than any other citizens in the State. This proposition is so manifestly absurd and false that it carries with it its own condemnation. Do the learned counsel for the county mean to tell us that in the case of a county which like Stanly County has no railroad the citizens of the county have no interest in having a railroad constructed through the county or have no other or greater interest than any other citizen of the State who lives hundreds of miles away from the county and away from the place where the railroad is to be constructed? We will not waste the time of the Court or our own time in answering any such obviously false and absurd proposition.

So, also, whether or not the railroad had been begun before April 10, 1869, or even before the adoption of the constitution (April 24, 1868), was a fact in pais to be determined by the county Commissioners before they issued the bonds, and not a matter with which the bona fide purchaser of these negotiable municipal bonds is concerned.

The Code of North Carolina is one act (Code, Section 3876), and went into operation November 1st, 1883 (Code, Section 3866).

At the end of Volume 2 of the Code, at bottom of page 603, *it is declared that the requirements of Section* 14, Article 2, of the Constitution of North Carolina, have been complied with in the passage of the Code; and this is also admitted.

It is admitted that the Board of Commissioners was proceeding under the provisions of Sections 1996 and 1997 of the Code, as well as under the act of March 3, 1887. If this be true, then the bonds are valid, notwithstanding the recitals in the bonds, provided the Code provisions conferred the power to issue them on the board.

Knox County vs. Ninth Nat. Bank, 147 U. S., 91.
Cairo vs. Zane, 149 U. S., 122.
Anderson, &c., vs. Beal, 113 U. S., 227.
Evansville vs. Dennett, 161 U. S.
Wilkes County vs. Coler, 180 U. S., 506.

Further Answer to Objections of County.

But the County contends that these sections did not authorize the issuance of the bonds for the following reasons :

Re the "interest of the citizens of the county."

In addition to what we have already said on these subjects (*ante*, pp. 13, 37, 43, 48), we add the following:

The appellants further contend "that said sections of the Code failed to authorize the issue of said bonds, because said Railroad was not, within the meaning and proper construction of Section 1996 of the Code, one in which the citizens of the County of Stanly had *an interest*."

Aside from the common sense of the matter, the grammatical construction of Section 1996 forbids the interpretation put on it by appellants—to wit, that, before a vote could be taken by the citizens of Stanly County, the said citizens must have a direct pecuniary interest in the road ; that is, must be stockholders in the road. The words of the statute are " in which the citizens of the county may have an interest."

The words are not " citizens of the county may have an interest," or " certain citizens," but " *the* citizens of the county."

So, if the pecuniary interest is meant, *every citizen* of the county must have stock before a county subscription could be voted, which is a *reductio ad absurdum*. But, if this was meant, the statute should have read, " in which the citizens of the county may have interests." So that, assuming that this interest means a pecuniary interest, every citizen of the county must have stock, and that stock must be " an interest," or, in other words, that stock must constitute only one interest, one block of stock, owned in joint ownership by every citizen of Stanly County—a palpable absurdity.

Re the " completion " required by the Code.

Earlier in this brief we discussed the subject of the meaning of the word " completion " in Section 1996 of the Code, and the erroneous construction thereof by the Supreme Court of North Carolina in the Stanly County case (see *ante*, page 35 *et seq*). We now submit some other observations on the subject of " completion " in answer to the positions and arguments on this subject taken and advanced by the counsel for the county.

It is also objected by the attorney for the County Commissioners, "Nor was the subscription made necessary to aid in the completion of the same" [that is, the railroad).

"No reasonable construction of this act will require that the road be aided should be actually built before the county was authorized to give it aid. That theory would, no doubt, add greatly to the security of the county and would relieve it from many of the perplexing questions which so commonly arise. If, however, the road were actually built, no aid would be needed in its construction. The aid might, in that event, be useful to its stockholders, or might relieve it from embarassments, but a road which is built can neither need nor receive aid in its construction. That is a fact accomplished" (*Kennicott vs. Supervisors*, 16 Wallace, 452).

Another defense has been urged in and sustained by the State Court, to wit: That the provisions of section 1996 refer to only those roads that were *unfinished in April, 1868, the time of the adoption of the constitution of 1868.*

"This reasoning leads us," says the Supreme Court of the State, "to the still further conclusion that, at the time when the act 1868–9 was brought forward in the Code, Section 1996, and the four succeeding sections, it could have had reference to no cases, except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the Constitution of 1868" (*Commissioners vs. Snuggs*, 121 N. C., on page 403, 1897).

This was first decided in 1897 and is one of the most astonishing legal solecisms into which so able a Court ever fell. The statute of April 10th, 1869, Section 1996 of Code, made no reference to the Constitution of 1868, nor to any other point of time in the past. Every word in Section 1996, denoting tense, is in the

future tense, and the Code went into effect November 1st, 1883 (See *ante*, p. 35, as to the *prospective operation* of these Sections of the Code.)

It is a universal rule of construction that all statutes are prospective in their operation, unless the statute itself says to the contrary.

" No statute should be given a restrospective operation unless its words expressly require such construction " (*State vs. Littlefield*, 93 N. C., 614).

What words in Section 1996 require that its operation be referred back to April, 1868, fifteen years before it was re-enacted in the Code, and one year before it was ever put in any shape on the statute books of North Carolina? Upon the same false principle of construction (a principle that can find no support in any book ever written on the subject), if Section 1996 should be re-enacted in the Code of 1900, it would have no application to any road that might be built during the next century, but would apply to roads incomplete in the year 1868, thirty-two years before its enactment!

But this very principle has been passed on by the Supreme Court of the United States in *James vs. Milwaukee*, 16 Wall., 159. In that case a statute authorized a city to lend its credit to any railroad company incorporated and organized; and this Court held that companies thereafter organized were intended to be included, and the statute was applicable to them, as well as those then in existence. This Court said (pp. 160, 161):

" The defendant in error insists that the power conferred was confined to companies already in existence at the date of the act, and such was the opinion of the court below. We entertain a different opinion."

In that case, there was no word denoting the future tense, no "shall," as in Section 1996, but the only words used were the adjectives, "incorporated and organized."

The cases relied on by the county's solicitors, concerning the power to tax, being conferred by special act, in answer to the contention on the part of complainants, that the Commissioners had the power to issue the bonds under the sections of the Code, set out above, can have no application to a case of the kind at bar. The Supreme Court has said, in a late case, *City of Charlotte vs. E. D. Shepard & Co.*, 122 N. C., page 603, that "where such a corporation," speaking of a municipal corporation, "has thus acquired the right to create a debt, and issue the bonds, *this power carries with it*, the power to levy the taxes necessary to pay said bonds, and the accruing interest thereon (*Ralls vs. County Court*, 105 U. S., 733; *U. S. vs. New Orleans*, 98 U. S., 381).

Negotiability of Municipal Bonds and What Negotiability Means.

We need not remind this Court that municipal bonds payable to bearer are negotiable with all that the word negotiable implies. Of course there must be power to issue the bonds, that is, a statute or other legislative enactment authorizing the issue of the bonds on some facts and under some circumstances. There is then, using the words often used by this Court "power to issue." Where this power to issue municipal bonds exists and bonds have been in fact issued in negotiable form, such bonds are negotiable paper with all that the word negotiable implies. The *bona fide* holder of such a

bond is not affected by any equities in favor of the maker of the bond. It is no defense to such a negotiable instrument that certain facts *in pais* did or did not exist before the bond was issued or when the bond was issued.

If the rule were otherwise, then every intending purchaser of a negotiable municipal bond, as for example a purchaser of the bonds of Stanly County, in the City of New York or in the City of London, would be bound to take a journey to Stanly County, North Carolina, and would be obliged at his peril and at all hazards to ascertain for himself whether or not the facts *in pais* which the county might set up as a defense to its bonds did or did not exist, and this would be true not only of the first purchaser of the bond from the county, but of all subsequent purchasers however remote and for all the time that the bonds would be outstanding. Thus, for example, an intending purchaser of such a county bond ten, fifteen or twenty years after its issuance would be obliged at his peril to ascertain and enquire, as the learned counsel for the county now seeks to maintain, whether or not at the time of the issuance of the bonds the citizens of the county had an interest in the railroad, whether or not the railroad had been in fact begun before a certain date, and other similar facts. How could any purchaser of a bond ten, fifteen, twenty or thirty years after its date ascertain any such facts?

No record required to be kept of such facts as are now set up by the county as a defense.

No statute required the county to keep any records of any fact as to whether or not the citizens of the county had an interest in the railroad or as to the date

when the railroad was begun, or other similiar facts, and even if the statute had required any records to be kept, it would require a further provision in the statute that such records should be constructive notice to all persons of the facts therein required to be stated. In the absence of any such provisions, the purchaser, who under the theory now advanced by the county must at his peril and at all hazards ascertain regarding these facts, could not rely upon any records.

How could a purchaser of these negotiable Stanly County bonds who bought them in the City of New York or in the City of London be expected to make a journey to the County in North Carolina, to ascertain these facts before he purchases the bonds? Who would buy any municipal bonds under such circumstances and with such a burden resting upon him? But even if he were willing to take that burden and sought in good faith to ascertain the facts, what sort of an inquiry must he make? Must he go to the county and open a kind of court of inquiry and ascertain by bringing in all the old settlers in the place who are accessible and obtaining their recollections, such as they might be, as to what were the facts in the matter? Even the conclusions arrived at by such a court of inquiry would not be conclusive but they would be always open to contest in any action on the bonds. It would be absolutely impossible, therefore, for an intending purchaser in the City of New York or in London ten, fifteen, twenty or thirty years after the issuance of the bonds by any such inquiry to determine conclusively whether or not the facts *in pais* existed before or at the time of the issuance of the bonds.

But all these mistaken views of the counsel for the

county arise from ignoring the principle that the county officers constitute a tribunal which is to determine once and for all time whether the facts *in pais* required by law to exist precedent to and in the issuance of the bonds do exist. A statute when it empowers county officers to issue bonds when certain facts and circumstances exist contemplates that these officers are a tribunal to determine whether or not the facts exist, and the issuance of the bonds by such officers is their determination made once and for all that such facts exist. Such officers are elected by the people of the county to represent the people of the county, and to them the Legislature confides the function and power of issuing negotiable bonds. Such officers, those elected and those legally entrusted with this power, constitute the tribunal, and the only tribunal to ascertain these facts *in pais*. If such facts cannot be ascertained by such a tribunal, then there is no way by which they can be ascertained.

If after negotiable bonds have been issued by a county or other municipality it is open at any time to the county, five, ten, twenty or thirty years afterwards, to set up as a defense to the bonds in the hands of a holder for value and without notice that a certain fact *in pais* did or did not exist, *then such bonds are not negotiable according to the law merchant*, but would be reduced to the class of obligations known as mere choses in action, open at all times and in the hands of any *bona fide* holder to any defense whatsoever which could be set up in respect of any non-negotiable obligation. It would be nothing but a solemn mockery any longer to designate any such obligation as a *negotiable* bond.

But even if any statute should require any record whatever to be made concerning the facts, it would not follow that merely because records were to be kept that, therefore, the bonds are non-negotiable, and that every purchaser of the bonds must go and consult the records and satisfy himself at his peril in regard to the facts. Something more than that would be necessary; it would be necessary that the statute should expressly provide that such records should be constructive notice of the facts. Let this once be understood and let defenses like this prevail against municipal bonds and the market for municipal bonds is gone. We do not believe this Court will give its assent to any such doctrine.

What better tribunal could there possible be for the determination of all these matters *in pais* than the officers who issue the bonds. It is for the interest both of the municipality and of the investing public that these matters be determined somehow and determined conclusively before or at the time of the issuance of the bonds. The officers elected by the citizens of the county and having by law the charge of the affairs of the county, are really the agents of the county; they act on behalf of the county. It is for the interest of the county that it should be able to have some officers to represent it and to bind it by their acts; otherwise how is the county ever to act or to carry on its public business? There is no more injustice to the county in holding that these officers of the county represent the county, and that their acts bind the county when they issue municipal bonds than when they do other acts on behalf of the county.

Suppose an intending purchaser of county bonds

goes to the county and says, "I would like to buy your bonds, but I want to be sure before I buy them that all the facts and conditions exist on which you are authorized to issue the bonds, and I want this matter settled so that when I take and pay for the bonds I may know that the question cannot be reopened and so that any one to whom I sell the bonds will not be bound to make any examination of these facts." Why should not the county be permitted to say in reply, "These facts have been investigated by our officers, chosen as required by law, to represent us in the matter. Our officers have investigated these facts and are satisfied that they exist and the county is willing to be bound by their action, and the county will issue to you its negotiable bond, which is an unconditional and incontestible obligation, so that neither you nor any subsequent holder of this bond to whom you may desire to sell it shall be bound to investigate into all the facts preliminary to its issuance, but the absolute obligation of the county is determined once and for all."

Why should not the county be permitted to have its officers thus represent it in the ascertainment of all these facts? It is the only practicable thing to do. It is absolutely impossible for each bondholder and each subsequent purchaser of the bonds to make an investigation of the facts for himself. If the obligation of the county is ever to be made unconditional and incontestible, why should it not be made so by the action of the county officers in the issuing of a bond negotiable in form and in fact cutting off, as against *bona fide* holders for value, all equities and defenses on the part of the county?

These principles of the negotiability of municipal bonds and the results that flow from such negotiability have been most emphatically stated by the Supreme Court of North Carolina in the case of *Belo vs. Commissioners of Forsyth County*, 76 N. C., 489 (1877), before the bonds in question were issued. In that case the Court said :

"Such bonds can be issued only in pursuance of a special grant of power, and the party claiming the benefit of such bonds must show a power in the corporate body to issue them, but if he is a purchaser for value without notice and before maturity, he need do no more. If a municipal corporation has the power to issue bonds only on a compliance with conditions precedent, as for instance, as here, in pursuance of a popular vote, and the bonds are issued, the presumption is that the conditions have been observed, and that they are *prima facie* valid, though the defendant may show the contrary unless he is estopped by his own acts from doing so. The principle, however, of equitable estoppel is a most important element in the transaction, for whether conditions precedent have been complied with is a matter of fact to be determined by some tribunal invested with the power and authority to decide it and the decision when made should be final. It is not disputed that the power to make a subscription of stock and to issue the bonds was conferred upon the County of Forsyth by the ordinance of the Convention. It is equally clear that the tribunal which was authorized to issue the bonds only on compliance with the conditions precedent was the sole tribunal to determine the fact whether the conditions had been fulfilled. In this case the Justices of the County, a majority concurring, was the court or tribunal designated to carry the law into effect and was the tribunal to decide whether the conditions had been complied with, and their decision is final in a suit by a *bona fide* holder of the bonds against the municipality. This determination of the question of fact by the Justices is manifested in two ways: first, by the records of their court, and second, by the recitals in the bonds issued by them."

As Mr. Justice HARLAN states, in the recent case of *Gunnison County Commissioners vs. E. H. Rollins & Sons*, 173 U. S., 255:

"Indeed, it is entirely competent for a state to provide by statute that all obligations, in whatever form, executed by a municipality existing under its laws, shall be subject to any defense that would be allowed in case of non-negotiable instruments. But, for reasons that everyone understands, no such statutes have been passed. Municipal obligations executed under such a statute could not be readily disposed of to those who invest in such securities."

Conclusion.

In the *Charlotte* (North Carolina) *Daily Observer*, February 3, 1898, is an able article by Lindsay Patterson, Esq., entitled "Stanly County Bond Case," in which with great clearness and force he attacks and demolishes the doctrine of the Supreme Court of North Carolina that the Act of April 10, 1869, Code, Sections 1996 to 2000, authorized the issue of county bonds only in cases where the railroad in question had been begun before the adoption of the Constitution in 1868. The same writer shows, what is also true, that in order that these sections of the Code may authorize the issue of bonds, the railroad need not have been begun before April 10, 1869, when the matter of these sections was first enacted. We reprint the said article substantially in full as an Appendix to this brief, and submit to the respectful consideration of this Court that the conclusions therein stated and the argument in support thereof are sound. We adopt these as our own, and make them part of this brief. We can see no escape from them.

This Court, therefore, should hold said bonds valid, and the decree of the Circuit Court of Appeals should for the foregoing reasons be affirmed.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel for Respondents.

APPENDIX TO BRIEF.

Argument and Views of Lindsay Patterson, Esq., of North Carolina.

STANLY COUNTY BOND CASE.

DECISION OF THE SUPREME COURT.

A Review of a Case That Embodies Principles of Far-Reaching and Dangerous Effects. If the Decision Stands It will Destroy the Fundamental Principles of Popular Government. The Courts Can Construe Statutes, But Have No Right to Radically Change Them.

TO THE EDITOR OF THE "OBSERVER":

The decision of the Supreme Court of North Carolina, which holds that the ratification of an act of the General Assembly can be inquired into in a collateral way, seems to be sustained by a long array of authorities, although there are decisions of the highest Courts in some of the States that hold the opposite. But whether sustained by the weight of authority or not, which matter is not germane to the present discussion, the principle on this point, as enunciated in the case of the town of Oxford and in the Stanly county case, must be accepted as the law in this State until it is changed by this or some subsequent court.

But the decision in the Stanly county case embodies principles much more far-reaching and dangerous in their effects than the mere declaration that the Supreme Court has a right to inquire whether the constitutional provisions have been compiled with in the passage of an act by the General Assembly.

It was admitted that The Code was properly passed,

and so, even, if the special acts incorporating railroad companies are not properly passed, my position is that the issuance of bonds by the counties is valid under sections 1996 to 2000 of The Code.

The attempted repudiation of hundred of thousands of dollars of honest debts by certain counties of the State has aroused public sentiment, and very rightly; for every citizen in the State has an interest in the matter, and many citizens of the State have direct pecuniary interest in it.

The constitution of 1868 was ratified in April, 1868. Article V, section 5, thereof, reads as follows: "And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

Twelve months thereafter, on April the 10th, 1869, the General Assembly, composed of a different body of men, passed an act, the first section of which reads as follows:

SECTION 1. "The General Assembly of North Carolina do enact: That the county commissioners of the several counties in this State shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

The other sections refer to the manner in which the elections shall be held and to other matters. There is absolutely no reference in the act to the constitution. It is not mentioned. The act has no more reference to the constitution of 1868 than it has to the constitution of the United States, adopted one hundred years ago. This act of the General Assembly was never repealed but was brought forward as sections 66 to 70 of chapter 99 of *Battle's Revisal*, in the following language: Section 66: "The county commissioners of the several counties in this State shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." And this enactment went into effect January 1st, 1874.

It was again brought forward as sections 1996 to 2000 of The Code and went into effect November 1st, 1883, in the following language: Section 1996. "The boards of commissioners of the several counties shall have power to subscribe stock to any railway company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." And there has not been a day since April 10, 1869, that this statute has not been a living, vital statute of the State. Three General Assemblies of the State thus passed on it and saw no need of clearing up any ambiguities in it.

These Assemblies in substance said:

"We say what we mean and mean what we say."

These General Assemblies knew the condition of affairs in 1869, and in 1873, and in 1883, just as well, if not better, than those of the present generation. What does the Supreme Court say about these sections in The Code. It says: "This reasoning leads us to the still further conclusion that at the time when the act of 1868 and 1869 was brought forward in The Code, section 1996, and the four succeeding sections, it could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868, and that therefore The Code sections could not apply to the present case, because the Yadkin Railroad was not begun to be constructed until about 1889."

This conclusion, as I contend, is absolutely unwarranted and is against every known principle or statuetory construction. So this statute is in effect reenacted by the Supreme Court and made to read as follows:

"The boards of commissioners of certain counties shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the county had a pecuniary interest at the time of the adoption of the constitution of 1868."

Now, this conclusion of the court necessarily involves three propositions, none of which can be sustained.

FIRST. That the statute of April, 1869, was retroactive in its effect and acted back twelve months to the time of the adoption of the constitution. The statute reads: "The county commissioners of the several counties shall have power to subscribe stock." There

is absolutely no reference to the constitution in this act. The words of the act are prospective, and it is a universal principle of construction that all statutes shall be prospective in their operation and not retrospective, unless the statute itself expressly says to the contrary.

SECOND. This holding or conclusion necessarily involves the denial of the right of the General Assembly to bring forward or re-enact a statute that has for many years been on the statute books. This statute was as much re-enacted by Battle's Revisal, and again by the Code of 1883, as if it had never before been on the statute books of the State. There has not been a day since April 10th, 1869, when it has not been a living, vital statute, and I contend, if work should begin on any railroad in the State to-day, that under this statute, the county could on to-morrow, vote a subscription, under section 1996 of The Code. The very words of the statute look to the future; and if they did not, every rule of construction would make them apply to any unfinished road in the future.

Battle's Revisal and the Code of 1883 provide that all public acts not therein included are repealed; but, if this construction stands, then the re-enactment of said statute in the Revisal and The Code amount to nothing, and, whether left out or put in these Codes, the act is repealed anyhow.

THIRD. This conclusion involves the further proposition that our Supreme Court can make a law as well as construe one already made. The Court strikes out the words "citizens of the county," and inserts in lieu thereof the word "county." It interpolates the word "pecuniary" before the word "interest," and adds the words "at the time of the adoption of the constitution of 1868."

This stretch of judicial power cannot be sustained. Under our form of government, the courts can construe statutes, but they have no right to radically change them.

Justice RODMAN lays down the true rule when he says: "But to add limiting or qualifying words is not in general permissible, or except for very strong reasons when the words used contained an intelligible description of the object." Now here is a statute as plain as it can be made. There is no confusion in its words; no ambiguity in its meaning. It is a plain, lucid statute. What right has the court to change it?

It is contended that because the constitution, in speaking about the powers of the State in lending its credit, used the words "direct pecuniary interest," and "at the time of the adoption of this constitution," it must follow that these words must be put into this statute.

It is admitted that the convention intended to insert the words into the constitution, and this intent was made manifest by the convention's taking pains to insert them. But it is equally clear that the General Assembly in April, 1869, intended not to insert them, for it took pains to leave them out. Two other General Assemblies took pains to leave them out, but the highest court says that they must go in. What was the necessity of putting them in? No known rule of construction required it or even allowed it. In the brief of the counsel for Stanly county is found this language: "It is also referred to to emphasize what has already been insisted upon, that the constitutional provision of 1868, and the acts of 1868-9 (sections 1996 *et seq.*), were only intended to apply to railroads existing at that date, in view of the extraordinary conditions of that period. They were left in the constitution of 1875 and brought forward in The Code evidently by inadvertence."

The mere statement of such a proposition so appals the intellect that its scope cannot be at once comprehended. The court does not adopt this principle in so many words, but it does in substance, when it says, "It could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868," and so this section 1996 is meaningless—inserted by inadvertence.

If the courts of our State have the constitutional power to say statutes are left in our Code by inadvertence, it has an equal power to say, as the counsel contended above, that provisions in the constitution of the State were inserted by inadvertence, and an equal power to say that provisions were left out by inadvertence, and an equal power to say that the entire body of the constitution and statutory law of the State is a mere inadvertence. And thus popular government, as it has heretofore been understood, ceases.

But section 1996 itself contains the strongest proof that it was not inserted in the Code of 1883 by inadvertence, but that it was inserted designedly.

Section 1 of the original act and section 66 of Bat-

tle's Revisal read : "The county commissioners of the several counties in this State shall have power," etc. But, when the Code commissioners and the General Assembly of 1883 came to insert this provision in The Code of 1883, they made section 1996 read as follows : "The board of commissioners of the several counties shall have power, etc." Section 705 of The Code provides : "All actions or proceedings by or against a county in its corporate capacity shall be in the name of the board of commissioners of the county. So that, so careful was the General Assembly of 1883 to give to this statute a present and future vitality, that it takes pains to change "The county commissioners" to "The boards of commissioners," a more correctly legal and technical expression. And it further drops out the words "in this State," all of which shows that the former statute underwent a searching examination.

By its insertion in this Code, this section took effect on November 1st, 1883, and, being prospective in all of its terms, it is in force to-day, and will so remain until repealed, giving a present power to any county of the State to subscribe stock to any railroad unfinished at the time of the subscription. But it can easily be shown that the construction put on this section 1996 by the court is wrong, when tested by every rule of law and of grammar.

It is an established rule of law that, when there is any doubt about the meaning of a statute, resort can be had to the title. The title to the act of April 10th, 1869, now section 1996 of The Code, is as follows :

"An act to authorize the several counties of the State to take stock in railroad companies," making it plain that this is a general act to apply to all counties of the State. Had it meant to limit the provision to those counties which already had stock in the roads to be completed, it would have said "an act to authorize certain counties," and section two of the act, now section 1997 of The Code, reads : "The commissioners of any county." If the view of the court is correct it should read "of any such county."

And section 1996 further says : "in which the citizens of the county may have an interest." If the court must interpolate the word "pecuniary" before "interest," then the logical result is that every citizen of the county must have stock in the road before a subscription can be voted, for it does not say : "in which certain citizens or in which citizens may have

an interest," but "in which the citizens of the county may have an interest." But if this is meant, and a pecuniary interest is meant, then the statute should read "in which the citizens of the county may have interests;" for it is not to be supposed that all the citizens of a county could own a block of railroad stock in joint ownership. And the statute reads, "may have an interest," the constitution says in which the State "has a direct pecuniary interest." "May have" evidently refers to the future, yet the illogical position is taken that before a county can subscribe stock to a railroad company the county must already have had invested in stock in the road with the loose surplus that so many counties of the State had at the close of the war, and now have. How did counties then, and how do they now, have pecuniary interests in railroad companies? By voting bonds and taking stock, not by making an independent investment in the stock first, and then voting bonds. But it is said that this construction is necessary in view of the extraordinary conditions of the period of 1868–9.

Were there not as many unfinished roads in the State in 1873 and 1883 as in 1868, and are there not as many or more in the year 1897? In its definition of the word completion the Court says: "We cannot see why the word completion should be thought to have been used by the legislators in any other sense than the one most usual and natural." But when the Court comes to define the word "interest" it abandons the most usual and natural sense and interpolates the word "pecuniary" before it, and gives it an unusual and unnatural meaning. Why did the framers of the constitution take pains to use the words "direct pecuniary interest?" Because they knew the use of the word "interest" alone carried with it a meaning broader than they intended. And what is the result of this faulty and illogical course of reasoning? Hundreds of thousands of dollars are repudiated, deserving persons are impoverished, the good name of the State is lost. I do not believe this reasoning can stand the test of time. I am further led to this conclusion by the fact that this construction of section 1996 is not adverted to in the concurring opinions of Justices CLARK and FURCHES, nor in the dissenting opinion of Chief-Justice FAIRCLOTH.

These bonds were in the hands of innocent purchasers before this change in the statute. It seems to in-

volve such a change in the statute as to impair the obligations of a contract, and the Supreme Court of the United States has decided that the constitutional provision against the enactment of such laws by States applies also to an impairment by State judicial decisions. If this case ever reaches this highest judicial tribunal, it can well repeat the words used by it in a well-known case, involving the validity of municipal bonds:

"We shall never immolate truth, justice and the law because a State tribunal has erected the altar and declared [decreed] the sacrifice."

LINDSAY PATTERSON.

Provisions of Constitution, Ordinance of Constitutional Convention and Statutes of North Carolina, which this Court may desire to refer to in connection with this case.

1.

The following are provisions of the **Constitution of North Carolina** (see Code of North Carolina, 1883, Volume 2):

"ARTICLE II.

"LEGISLATIVE DEPARTMENT.

* * * * * *

SECTION 12. "The General Assembly shall not pass any private law, unless it shall be made to appear thirty days' notice of application to pass such a law shall have been given under such direction, and in such manner as shall be provided by law."

* * * * * *

SECTION 14. "No law shall be passed to raise money on the credit of the State or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities or towns to do so, unless the bill for the purpose shall have been read three several times in each House of the General Assembly and passed three several readings, which readings shall have been on three different days and agreed to by each House respectively, and unless the yeas and nays on the second and third reading of the bill shall have been entered on the Journal."

* * * * * *

SECTION 16. "Each House shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly."

* * * * * *

SECTION 21. "The style of the acts shall be: 'The General Assembly of North Carolina do enact.'"

* * * * * *

SECTION 23. "All bills and resolutions of a legislative nature shall be read three times in each House before they pass into laws, and shall be signed by the presiding officers of both Houses."

* * * * * *

"ARTICLE IV.

"JUDICIAL DEPARTMENT.

SECTION 19. "The laws of North Carolina, not repugnant to this constitution, or the constitution and laws of the United States, shall be in force until lawfully altered."

ARTICLE V.

REVENUE AND TAXATION.

SECTION 1. "The General Assembly shall levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which shall be equal on each to the tax on property valued at three hundred dollars in cash. The Commissioners of the several counties may exempt from capitation tax in special cases, on account of poverty and infirmity, and the State and county capitation tax combined shall never exceed two dollars on the head."

* * * * * *

SECTION 4. "Until the bonds of the State shall be at par, the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State, except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall in the same bill levy a special tax to pay the interest annually. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct

vote of the people of the State, and be approved by a majority of those who shall vote thereon."

* * * * * *

SECTION 6. "The taxes levied by the Commissioners of the several counties for county purposes, shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly."

SECTION 7. "Every act of the General Assembly levying a tax, shall state the special object to which it is to be applied, and it shall be applied to no other purpose."

ARTICLE VII.

* * * * * *

SECTION 7. "No county, city, town or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein."

SECTION 12. "All charters, ordinances and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this constitution."

2.

Act of April 10, 1869, being Chapter CLXII of the Laws of 1868, 1869, (p. 417), "an Act to authorize the several counties of the State to take stock in railroad companies."

SECTION 1. The General Assembly of North Carolina do enact, that the County Commissioners of the several Counties in this State shall have power to subscribe stock to any Rail Road Company or Companies, when nessary to aid in the completion of any Rail Road in which the citizens of the County may have an interest.

SEC. 2. That the Commissioners of any County proposing to take stock in any Rail Road Company shall meet and agree upon the amount to be subscribed, and if a majority of the Commissioners shall vote for the proposition, this shall be entered of record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the Commissioners shall order an election, to be held on a notice of not less than thirty days for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the County Commissioners. And if a majority of the qualified voters of the County shall vote in favor of the proposition, the County Commissioners, through their Chairman, shall have power to subscribe the amount of stock proposed by them, and submitted to the people subject to all the rules, regulations and restrictions of other stockholders in such company or companies : Provided, also, That the Counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

SEC. 3. That all elections ordered under the second section of this act shall be held by the Sheriff under the laws and regulations provided for the election of members of the General Assembly. The votes shall be compared by the County Commissioners, who shall make a record of the same.

SEC. 4. In case the County shall subscribe the amount proposed in bonds, the Commissioners shall have power to fix the rate of interest, not to exceed the rate of eight per cent., when the interest on said bonds shall be payable, and at what place, and shall also fix the time and places of paying the interest, and shall also determine the mod and manner of the same ; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds.

SEC. 5. The taxes authorized by this act, to be raised for the payment of interest or principal, shall be collected by the Sheriff in like manner as other public taxes, shall be paid into the hands of the County Treasurer, to be used by the Chairman of the County Commissioners as directed by this act.

SEC. 6. This act shall be in force from and after its ratification.

Ratified the 10th day of April, A. D. 1869.

[The Act of April 10, 1869, was afterwards incorporated in the Code of 1883 and designated as Sections 1996–2000, next below reprinted]

3.

THE CODE SECTIONS.

Sections 1996-2000 of the Code of North Carolina of 1883 (**also authorizing bonds in question**):

"SEC. 1996. The boards of commissioners of the several counties shall have power to subscribe stoek to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.

SEC. 1997. The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and, if a majority of the board shall vote for the proposition, this shall be entered upon the record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board of county commissioners. And, if a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the ammount of stock proposed by them and submitted ts the people, subject to all the rules, regulations and restrictions of other stockholders in such company or companies. Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

SEC. 1898. All elections ordered under the preceding section shall be held by the sheriff under the laws and regulations provided for the election of members of the General Assembly. The votes shall be compared by

the board of county commissioners, who shall make a record of the same.

SEC. 1999. In case the *county* shall subscribe the amount proposed in bonds, *the board of commissioners shall have power* to fix the rate of interest, not to exceed the rate of eight per cent., when the interest on said bonds shall be payable, and at what place, and shal' also fix the time and places of paying the interest, and shall also determine the mode and manner of the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds.

SEC. 2000. The taxes authorized by the three preceding sections to be raised for the payment of interest or principal shall be collected by the *sheriff in like manner as other State taxes*, and be paid into the hands of the county treasurer to be used by the chairman of the board of county commissioners as directed by this chapter."

It is admitted by all parties and all courts that these sections of the Code are constitutionally valid, and authorize the issue of bonds on the conditions therein prescribed.

Code sections 1996 to 2000 were originally the above-printed act of April 10, 1869, the title of which is, "An act to authorize the several counties of the State to take stock in railroad companies." Chapter 171, Public Laws, North Carolina, 1868–69. Ratified April 10, 1869. Public Laws, North Carolina, 1868–69, page 417. Re-enacted in Battle's Revisal, January 1, 1874, as Sections 66 to 70 of Chapter 99; re-enacted in Code of North Carolina which went into effect November 1, 1883.